IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE
LETTERS PATENT APPEAL NO.27 OF 2002
IN
FIRST APPEAL NO.1192 OF 2001
IN
B.C.C.C.SUIT NO.639 OF 2001

Shri Satish Dalichand Shah)
of Mumbai, Indian Inhabitant,)
adult, carrying on business in the)
name and under the style of)
Dalichand Kapporchand & Company)
in a shop on the ground floor in a)
building known as Gulab Baug and)
now known as Sai Laxman Bazar,)
M.G.Road, Santacruz (West),)
Bombay 400 054.).. Appellant.

Versus

The Municipal Corporation of)
Greater Bombay, a Statutory Body)
incorporated under the)
Bombay Municipal Corporation Act,)
1988 having its Head Office at)
Bombay Municipal Corporation)
Building, Mahapalika Marg,)
Bombay 400 001.).. Respondent

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Shri S.V.Shetty, Advocate, i/b M/s.S.V.Shetty & Co.for the appellant.

Ms Geeta Joglekar, Advocate, for the respondent.

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CORAM : R.M.S.KHANDEPARKAR &
ANOOP V. MOHTA, JJ

DATED : 16TH JUNE, 2005.

ORAL JUDGEMENT : (Per R.M.S.Khandeparkar, J)

1. Heard the learned Advocates for the parties.

Perused the records.

2. The appellant challenges the order dated 2nd November, 2001 passed by the learned Single Judge in the First Appeal No.1192 of 2001. By the impugned order, the appeal filed by the appellant against the judgment and decree dated 8th June, 2001 passed by the Trial Court on preliminary issue of limitation was dismissed while confirming the order of the Trial Court and holding that the suit filed by the appellant was barred by the law of limitation.

3. Few facts relevant for the decision are that the appellant claims to be the monthly tenant of a suit shop situated on the ground floor at Gulab Baug, Laxmi Bazar, M.G.Road, Santacruz (West), Mumbai. Undisputedly, he is in possession of the said premises. A notice under Section 351 of the Bombay Municipal Corporation, 1888, which is now called as the Mumbai Municipal Corporation Act, 1888, hereinafter called as "the said Act", came to be issued to the appellant on 23rd May, 1994 alleging that the appellant had carried out extension of 1.30m x 4.30m. in front of the said shop premises and requiring the appellant to show cause as to why the same should not be removed. The appellant replied the

said notice on 31st May, 1994 and requested for hearing in order to enable the appellant to produce necessary documents for inspection by the authorities in respect of his contention in relation to the alleged extension. The respondent by its order dated 2nd September, 1994 informed the appellant that as he had failed to produce documentary evidence to prove authorisation of the work described in the said notice issued to him, he was required to remove the said extension forthwith, failing which, the Ward Officer would be deputed to demolish the entire structure.

4. It is the case of the appellant that no action in terms of the said decision dated 2nd September, 1994 was even taken by the respondent till March, 1996. However, on 22nd March, 1996, some of the employees of Mumbai Municipal Corporation came to the site and threatened the appellant that they would demolish the alleged extension in terms of the said order. The appellant, therefore, filed the L.C.suit No.1910 of 1996 for declaration and injunction on 3rd April, 1996. Simultaneously, the appellant had also taken out the notice for interim relief. The same was opposed by the respondent contending that the suit itself was not maintainable in the absence of notice under Section 527 of the said Act. Subsequently, even

in the written statement, similar objection was raised by the respondent. Meanwhile, on 3rd August, 1998, the appellant served a notice under Section 527 of the said Act upon the respondent. After filing of the written statement on 30th September, 2000, the appellant sought leave of the Trial Court under an application dated 20th December, 2000 to withdraw the said suit with liberty to file a fresh suit, as the said suit would have been defeated on technical ground of absence of prior notice to the respondent. The said leave was granted while allowing the appellant to withdraw the suit on 20th December, 2000. The appellant thereafter on 29th January, 2001 filed fresh suit being L.C.No.639 of 2001. He also took out Notice of Motion and consequent to the filing of the reply and pleadings, bearing in mind the provisions of Section 14(3) of the Limitation Act, a preliminary issue regarding bar of limitation came to be framed on 28th April, 2001. The parties were allowed to lead evidence. The appellant examined himself for the plaintiff. None was examined on behalf of the Corporation. The Trial Court, after hearing the parties on the said issue, held that the suit was barred by law of limitation, and therefore, dismissed the suit on 8th June, 2001. The appeal carried against the judgment and order of the Trial Court was

dismissed by the learned Single Judge by the impugned judgment dated 11th July, 2001.

5. Perusal of the impugned judgment discloses that the learned Single Judge had held that the order directing demolition of extended portion was passed by the Corporation on 2nd September, 1994, and therefore, the cause of action for filling the suit, if any, had arisen on the said date, i.e. 2nd September, 1994. Considering the provisions of Section 527 of the said Act which prescribes limitation of six months for filing a suit from the date of accrual of the cause of action, the learned Single Judge observed that the suit had been filed much after the period of limitation and, therefore, the same was barred by law of limitation. Hence the present Appeal.

6. While assailing the impugned judgment, the learned Advocate appearing for the appellant submitted that though the order directing demolition was passed on 2nd September, 1994, it was the case of the appellant that the employees of Mumbai Municipal Corporation approached the appellant on 22nd March, 1996 and threatened the appellant that they would demolish the structure in accordance with the decision dated 2nd September, 1994, and therefore, a fresh

cause of action had arisen on 22nd March, 1996, apart from the fact that the decision directing demolition of the structure gave a continuing cause of action for filing the suit. Reliance is sought to be placed in the decisions in the matter of **Mt.Bolo v. Mt.Koklan & Ors.,** reported in AIR 1930 Privy Council 270, **Mst.Rukhmabai v. Lala Laxminarayan & Ors.,** reported in AIR 1960 SC 335, **State of Punjab and Ors. v. Gurdev Singh and Ashok Kumar,** reported in AIR 1992 SC 111, **India Electric Works Ltd. v. James Mantosh & Anr.,** reported in AIR 1971 SC 2313, **Mohanlal v. State of Madhya Pradesh & Ors,** reported in AIR 1980 Madhya Pradesh 1 and **Virendrasingh Fojasingh & Ors. v. Municipal Corporation of the City of Ahmedabad,** reported in AIR 1990 Gujarat 40. The learned Advocate for the appellant has further submitted that the notice was issued by the appellant on 3rd August, 1998 and the earlier suit was withdrawn with liberty to file afresh one on same cause of action which was granted and accordingly other suit was filed within 40 days from the date of withdrawal of the earlier suit, and therefore, considering the provisions of Section 14 of the Limitation Act, 1963, the suit could not have been held as barred by law of limitation, and in that regard, attention is drawn to the decision of the Apex Court in **Rameshwarlal v. Municipal Council, Tonk**

& Ors., reported in (1996)6 SCC 100. He has further submitted that the learned Single Judge has not at all considered all these aspects of the matter while dismissing the appeal.

7. The learned Advocate appearing for the respondent, on the other hand, drawing attention to the decision of the learned Single Judge in **Sabira Aslam Sikwani v. Mohammed Yusuf Hussain & Ors.,** reported in 2003(3) Mh.L.J. 974, and **Beni Ram & Ors. v. Ganga Sah & Anr.,** reported in AIR 1968 Patna 284, has submitted that the cause of action for filing the suit in the case in hand arose on 2nd September, 1994 when direction for demolition of the structure was issued. Considering the provisions of Section 527 of the said Act, she has further submitted that the suit ought to have been filed within six months from the date of 2nd September, 1994, and therefore, even the first suit as well as the second one were barred by law of limitation. Besides, the appellant had not issued notice prior to the earlier suit and the notice issued during the pendency of the earlier suit cannot enure to the benefit of the appellant for the purpose of second suit, and therefore, there was no valid notice under Section 527 of the said Act. On that count also, no fault could be found with the

concurrent view taken by the learned Single Judge as well as by the Trial Court. She has further submitted that in view of the withdrawal of the suit after service of the notice dated 3rd August, 1998, the said notice was rendered infructuous. In any case, considering the provisions of Order XXIII Rule 2 of the Code of Civil Procedure, the provisions of Section 14 of the Limitation Act are not attracted.

8. Upon hearing the learned Advocates for the parties and on perusal of the records, the first point which arises for consideration relates to accrual of the cause of action and the date thereof as the issue dealt with by the Trial Court is essentially in terms of Section 3 of the Limitation Act, which requires the Court to ascertain whether the suit has been filed within a period of limitation prescribed for filing of the suit of the nature under consideration, from the date of accrual of the cause of action.

9. Undisputedly, the cause of action in the case in hand relates to the erection of a structure stated to be done in violation of the provisions of the said Act. It is not in dispute, nor it can be disputed, that such structures are essentially to be built only after obtaining necessary permission for same from the

authorities appointed under the said Act. In other words, validity or legality of any structure would depend upon the compliance of provisions of the said Act and it is the duty of the authorities constituted under the said Act to ensure that the provisions of the said Act are complied with before erecting any structure in an area to which the provisions of the said Act apply. In other words, any decision for initiating an action for illegality or irregularity in respect of erection of any such structure is to be taken by the authorities under the said Act. Obviously, it would follow that any action to be taken by aggrieved person on account of such decision regarding legality or illegality of a structure would depend upon the decision of the authorities under the said Act in relation to such structure. This will evidently reveal that the cause of action for filing the suit in relation to the issue pertaining to legality or illegality of any structure would arise essentially from the decision of the competent authority which is empowered to take such decision in relation to such matter. In fact, the Chapter XII of the said Act deals with the subject of building regulations and section 337 thereunder requires notice to be given to a competent authority under the said Act whosoever intends to erect a building or structure

in the area to which the provisions of the said Act apply. Sections 338, 339 and 340 deal with the powers of the authorities requiring the applicant to comply with certain provisions in order to enable him to get necessary permission for erection of a building or structure. Even before commencement of the construction, a notice is required to be given in terms of Section 342. Even in case of any alteration to be made to buildings which have already been constructed, it requires written permission of Commissioner allowing commencement of such repairs in terms of Section 347C. In the course of construction, the authorities are entitled to inspect the building to ensure that the construction is being carried out in accordance with the permission granted, and the provisions of Section 351 of the said Act are very clear in that regard. Section 351 deals with an action to be taken by the authorities in respect of building or work commenced contrary to the provisions of the said Act. Section 354A clearly empowers the authorities to stop erection of building or work commenced or carried on unlawfully. Thus, there are various provisions in the said Act which empower not only the requirement of prior permission of the authorities for carrying out any construction in the area to which the provisions of the said Act apply but

the same also allow certain control of such authorities over the activities of construction while construction is in progress and further to ensure that construction is carried out in accordance with the permission granted by the authorities. It further empowers the authorities to take necessary action in relation to the structures carried out contrary to the permission granted.

10. All provisions of the said Act dealing with construction activities in the area to which the provisions of the said Act apply, therefore, apparently disclose that the decision of the competent authority in relation to legality or illegality assumes finality under the said Act, albeit, subject to judicial review by the Courts. However, in order to invite judicial review of such action, decision taken by the competent authority is to be considered as final, giving necessary cause of action for the aggrieved party to seek such judicial review. This would obviously disclose that the notice issued on 2nd September, 1994 certainly gave cause of action to the appellant for the purpose of filing of a suit if he was aggrieved by the decision of the authority in relation to the structure in question. Once such decision had attained finality and has given cause of

action for the appellant to challenge the same before a Court in case he was aggrieved by the said decision and that being the date of accrual of cause of action, limitation for the purpose of Section 527 of the said Act would commence from the said date.

11. Section 527 of the said Act has two parts. One relates to limitation for instituting suit against the decision of the authority under the Act and another relates to requirement of notice prior to institution of such suit. Clause (a) of sub-section (1) of Section 527 of the said Act relates to notice whereas clause (b) relates to the period of limitation which prescribed six months' period next after the accrual of the cause of action. In other words, the period of six months would commence from the date following the date of the cause of action. Clause (a) would require one month notice prior to the institution of a suit. It specifically says that no suit shall be filed before expiry of one month next after notice in writing. Undoubtedly, no period is fixed for issuance of notice as such, but the provision relating to requirement of issuance of notice is to be found in the same provision which deals with the period of limitation of six months for filing a suit. It would obviously mean that the

notice should be served within a period of six months from the date of accrual of the cause of action. It cannot be served at sweet will of the aggrieved party, nor service of the notice after a period of six months from the date of accrual of the cause of action can automatically extend the period of limitation for the purpose of filing of a suit. No interpretation which would virtually defeat the very object behind incorporating the period of limitation for institution of a suit against an action by authority under the said Act can be allowed, besides that the provisions are very clear and, therefore, warrant no interpretation as such.

12. As regards the claim of the appellant that the cause of action had arisen on account of threats given by Mumbai Municipal Corporation employees, it is to be noted that we have already held that the cause of action for the aggrieved party would be a decision by the competent authority under the said Act. Assuming that the contention of a party that the employees of Corporation had approached the appellant on 22nd March, 1996 for the purpose of demolition of the structure, if it is assumed to be true, the fact remains that they had approached for the purpose of carrying out the decision delivered by the competent

authority on 2nd September, 1994. It is not the case of the appellant that the employees of Corporation had passed a fresh order or there was a fresh decision either on 22nd March, 1996 or any time after 2nd September, 1994 but prior to 22nd March, 1996. In other words, the employees who had approached the appellant on 22nd March, 1996 had come to the site merely to execute the order which was passed on 2nd September, 1994. They on their own had not taken any fresh decision in relation to the structure in question. They had approached the appellant merely to implement the order which was passed on 2nd September, 1994. Being so, by no stretch of imagination, it can be said that there was a fresh cause of action for filing the suit under Section 527 of the said Act in relation to the decision for demolition of the structure in question. The decision for demolition was already taken on 2nd September, 1994 and it was merely sought to be enforced in the year 1996. It is not the execution of the decision that gives an independent cause of action but it is the decision that gives cause of action for filing of the suit. The appellant is not entitled to challenge mere execution of the decision but he is in fact entitled to challenge the decision itself. This shows that cause of action for all purposes had already accrued

on 2nd September, 1994 and not on 2nd March, 1996.

13. The another point which is sought to be raised is regarding continuing cause of action. Once it is apparent that, for the reasons stated above, that the cause of action was complete on 2nd September, 1994, as it related to the decision for demolition of the structure and there was no further decision after 2nd September, 1994 and whatever action which was sought to be taken thereafter was merely for implementation of the said decision, there was no occasion for the appellant to presume or to contend that there was any continuing cause of action after 2nd September, 1994. Being so, the contention regarding continuing cause of action is totally devoid of substance.

14. Reverting to the facts, therefore, once it is apparent that the cause of action had arisen on 2nd September, 1994, the first suit filed on 3rd April, 1996 itself was beyond the period of limitation. Merely because the said suit was withdrawn in December, 2000 and the new suit was instituted in January, 2001, it cannot be said that it was filed within the period of limitation, as contemplated under Section 527 of the said Act. Besides, it is also sought to be contended that there was no valid notice

before institution of the suit. We are not required to address the said issue in the matter because the Trial Court has dismissed the suit merely on the point of bar of limitation. We are, therefore, concerned only with the issue of limitation.

15. The decision of the Privy Council in **Mt. Bolo's case (supra)** was to the effect that "there can be no "right to sue" until there is an accrual of the right asserted in the suit and its infringement or at least clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted." In the case in hand, the right is not sought to be infringed by the employees of the Mumbai Municipal Corporation. The alleged right of the appellant was in relation to the suit structure which was sought to be denied by the decision of the competent authority under the Act and the said decision was delivered on 2nd September, 1994 which was sought to be implemented by the employees of the Mumbai Municipal Corporation. No independent right had accrued against implementation of the decision in favour of the appellant. Right, if any, in favour of the appellant was on account of the decision taken by the competent authority on 2nd September, 1994, and not on account of its mere implementation. The suit

against mere implementation of such decision, in no case, would be maintainable, unless the decision itself is challenged. The relief against the implementation would be merely a consequential relief. Therefore, cause of action, if any, in favour of the appellant had already arisen on 2nd September, 1994 and not on account of intimation given by the employees of Mumbai Municipal Corporation for enforcement of the said decision, and hence the decision of the Privy Council is of no help to the appellant to contend that the right had accrued or his right was infringed by approaching the employees to enforce the decision already taken in 1994.

16. As regards the decision of the Apex Court in **Rukhmabai's case (supra),** it was held therein that "Every threat by a party to such a right, however ineffective and innocuous it may be, cannot be considered to be a clear and unequivocal threat so as to compel him to file a suit. Whether a particular threat gives rise to a compulsory cause of action depends upon the question **whether that threat effectively invades or jeopardizes the said right."** (Emphasis supplied). The expression "whether that threat effectively invades or jeopardizes" discloses that the cause of action has necessarily to relate on

decisive action which invades the right of a party. A Government or Corporation employee seeking to perform his statutory duty to give effect to the decision of the authority cannot be said to give a threat effectively invading or jeopardizing somebody's right but his decision in relation to the right of a party pertaining to any immovable property which he is empowered to take under the statutory provision certainly would give rise to cause of action. The sub-ordinate officers and employees seeking to implement such decision which had already been taken cannot be said to give a fresh cause of action. Therefore, cause of action arose in September, 1994 on account of the decision taken adverse to the appellant in relation to the suit structure and merely because the employees of Mumbai Municipal Corporation sought to perform those duties to implement the said decision and informed that they would implement the decision taken by the competent authority cannot be said to have given rise to a fresh and independent cause of action. The decision of the Apex Court, therefore, rather than assisting the appellant justifies the contention canvassed on behalf of the appellant.

17. In **Gurdev Singh's case (supra)**, the Apex Court held that "The words "right to sue" ordinarily mean

the right to seek relief by means of legal proceedings. Generally, the right to sue accrues only when the cause of action arises, that is, the right to prosecute to obtain relief by legal means. The suit must be instituted when the right asserted in the suit is infringed or when there is a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted." The Apex Court has reiterated its decision in **Rukhmabai's case** as well as followed the decision of the Privy Council in **Bolo's case**.

18. Yet another point sought to be raised relates to the applicability of Section 14 of the Limitation Act. Undoubtedly, Sub-section (1) of Section 14 of the Limitation Act provides that "in computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it." In fact, it is not necessary to deal with the said issue at all, as the same does

not arise for consideration in the facts and circumstances of the case. Once it is clear that the cause of action for filing of the suit had arisen in favour of the appellant on 2nd September, 1994, but the first suit was filed in the year 1996, it is totally immaterial as to when the first suit was withdrawn and the second suit was filed. As the first suit itself was barred by law of limitation, the question of giving benefit of Section 14 of the Limitation Act to the appellant does not arise at all, and for the same, the other decisions which are relied upon in relation to this point need not be referred to nor they require consideration for disposing the matter.

19. For the reasons stated above, therefore, we do not find any illegality committed while dismissing the First Appeal by the learned Single Judge nor any illegality committed by the Trial Court in holding that the suit is barred by law of limitation. We have no hesitation in confirming the concurrent findings arrived by the Trial Court as well as the First Appellant Court that the suit filed by the appellant was barred by law of limitation and we do hereby confirm the same. For the reasons stated above, therefore, the Letters Patent Appeal fails and is

hereby dismissed. There shall be no order as to costs.

20. At this stage, the learned Advocate for the appellant prays for direction to maintain status quo in relation to the suit structure for a period of eight weeks. The same is objected by the learned Advocate for the respondent. However, we are inclined to grant order of status quo as prayed for, for a period of eight weeks. Order accordingly.

(R.M.S.KHANDEPARKAR, J)

(ANOOP V.MOHTA, J)